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Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

January 25, 1983

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ARIZONA ATTORNEY GENERAL

Mr. Jerry DeRose
Deputy Gila County Attorney
1100 East Ash Street
Globe, Arizona 85501

Re: I83-008 (R83-005)

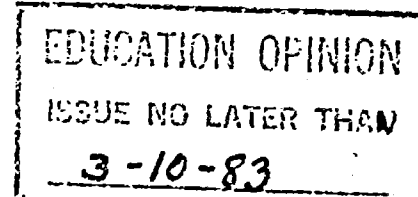
Dear Mr. DeRose:

We decline to review your opinion dated January 7, 1983, to the Superintendent of Hayden-Winkelman School District concerning enrolling children in kindergarten who are not yet five years old.

Sincerely,

BOB CORBIN
Attorney General

BC/VBW/bl



CIVIL DEPUTIES

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CRIMINAL INVESTIGATOR
TOMMIE RASMUSSEN

January 7, 1982

1-11-83 pc
EDUCATION
R83-005

Mr. Lalo Serrano
Superintendent of Schools
Hayden-Winkelman School District
Post Office Box 409
Winkelman, Arizona 85292

Re: OPINION - Winkelman Pre School

Dear Mr. Serrano:

This opinion is an update of the opinion issued August 2, 1982, concerning the authority of the Hayden/Winkelman School District to establish a pre school.

The Hayden/Winkelman School District may establish a kindergarten program pursuant to A.R.S. §15-703. Any student enrolling in that program must be five (5) years of age prior to September 1st of the current school year. The School District may, if it is determined to be in the best interest of the child, allow a child to enter into a kindergarten program when the child reaches the required age on or before January 1st of the current school year. This authority is found in A.R.S. §15-821.

Therefore, it is the opinion of this office that a kindergarten program may be established for children under the age of six (6) years; however, the children must reach the age of five (5) years prior to January 1st of the current school year.

Very truly yours,

JERRY DE ROSE
Deputy County Attorney

JDR:sj

cc: Attorney General's Office



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert H. Corbin

March 8, 1983

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ARIZONA ATTORNEY GENERAL

Mr. Barry M. Corey
Corey, Farrell & Bogutz, P.C.
Transamerica Building, Suite 509
177 North Church Avenue
Tucson, AZ 85701

Re: I83- 025 (R82-181)

Dear Mr. Corey:

We have reviewed your opinion dated November 23, 1982, to Mr. Strachan, Associate to the Superintendent of the Amphitheater School District. We concur with your conclusion that the Arizona Open Meeting Law, as amended, prohibits the governing board's negotiations committee from conducting in executive session any discussions or consultations with representatives of employee organizations regarding salaries, salary schedules or compensation in the form of fringe benefits.^{1/} We revise that portion of your opinion pertaining to the applicability of the Open Meeting Law to negotiations between the designated representatives of the governing board and representatives of the employee organization.

1. As we have previously pointed out, A.R.S. § 38-431.03.A.1, which deals with the discussion or consideration of certain personnel matters, including salaries, with respect to a public officer, appointee or employee of any public body, is limited to discussions relating to an individual employee. Ariz.Atty.Gen.Op. I81-058. That particular section does not apply to discussions or consultations pertaining to all or a class of all employees such as those discussions or consultations which would be undertaken by representatives of employee organizations.

Mr. Barry Corey
March 8, 1983
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The Arizona Open Meeting Law is applicable to the school board and its committees, including subcommittees, whether or not such committees are composed of school board members.^{2/} Ariz. Atty. Gen. Op. 180-202. Executive sessions of such committees are permissible only for the limited purposes enumerated in A.R.S. § 38-431.03.

Your letter examines a district policy which would allow the governing board's "designated representatives," rather than the "negotiations committee," to conduct negotiations with the Amphitheater Classroom Teachers' Association.^{3/} Even though "designated representatives" of the governing board may constitute less than a quorum of the governing board, they may, nonetheless, function as a committee^{4/} or subcommittee of the governing board which is, by definition, a "public body" subject to the Open Meeting Laws. A.R.S. § 38-431.5. If none of the board's designated representatives is a governing

2. Subcommittees and advisory committees are not required to keep minutes. A.R.S. § 38-431.01.B.

3. The situation in the Boyd v. Mary E. Dill School District No. 51, 129 Ariz. 422, 631 P.2d 577 (1981), is distinguishable from the proposal contemplated in your letter to Mr. Strachan. In that case, none of the individuals who met during recess of the meeting were "designated representatives." There is no indication that the board had established a committee or designated representative for the purpose of negotiating and recommending personnel action. It appears from the facts of that case that the meeting between the board president with the district administrator and its lawyer during recess was a spontaneous event, not authorized by the governing board.

4. By definition, "committee" customarily denotes a group consisting of more than one person. See Webster's New Collegiate Dictionary 224 (1979). Thus, if the board designates one individual only as its representative, that individual would not fall within the purview of A.R.S. § 38-431.01, as he alone would not constitute a "committee." However, if one member of the governing board is designated as a representative in addition to one or more other individuals, whether or not such individuals are also board members, that body would constitute a "committee" of the governing board.

Mr. Barry Corey
March 8, 1983
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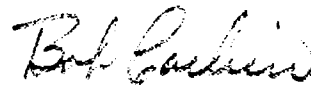
board member, then the committee may be an advisory committee^{5/} which is, likewise, a public body. A.R.S. § 38-431.5.

Moreover, we have previously warned that any scheme or device designed to circumvent the purposes of the Open Meeting Law would be subject to close scrutiny. In Ariz.Atty.Gen.Op. 75-8 we said:

[D]iscussions and deliberations between less than a majority of the members of a governing body, or other devices, when used to circumvent the purposes of the Act, would constitute a violation which would subject the governing body and the participating members to the several sanctions provided for in the Act. (Emphasis added.)

We therefore conclude that negotiations between any employee organization and what constitutes a quorum of a group composed of two or more designated board representatives, whether such representatives are governing board members, must be held in an open meeting.

Sincerely,



BOB CORBIN
Attorney General

BC:SMS:lm

5. "Advisory committee" is defined as a committee officially established, upon motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body. A.R.S. § 38-431.1.

COREY, FARRELL & BOGUTZ, P.C.

ATTORNEYS AT LAW

BARRY M. COREY
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(602) 882-4994

November 23, 1982

The Honorable Bob Corbin
Attorney General
State of Arizona
State Capitol
Phoenix, Arizona 85007

EDUCATION OPINION
ISSUE NO LATER THAN
1-28-83

12-3-82 pc
SEGAL
R82-181

Re: Negotiations (Meet and Confer)
in Open Meetings

Dear Mr. Corbin:

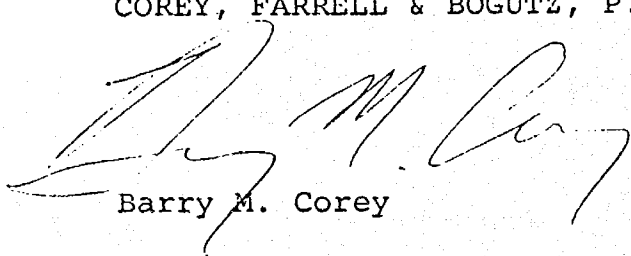
This office represents Amphitheater Public School District in Pima County, Arizona. Our office has been requested to express an opinion with respect to the necessity of conducting negotiations pursuant to a Meet and Confer Process in open meetings under the Open Meeting Law. We have prepared an opinion letter, and we enclose a copy.

I would appreciate a review of this opinion by your office and your concurrence, revision, or expressed decision not to review.

Thank you kindly for your attention to this matter.

Very truly yours,

COREY, FARRELL & BOGUTZ, P.C.


Barry M. Corey

BMC/tld
Enclosure

COREY, FARRELL & BOGUTZ, P.C.

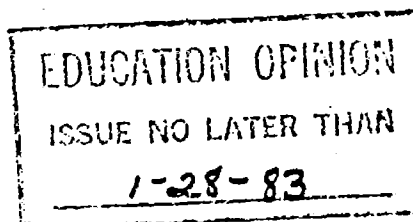
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November 15, 1982

Alfred C. Strachan
Associate to the Superintendent
Staff Relations
Amphitheater School District
125 East Prince Road
Tucson, Arizona 85705



12-3-82 pc
SEGAL
R82- 181

Re: Negotiations (Meet and Confer)
in Open Meetings

Dear Mr. Strachan:

You have provided me with a Memorandum in which the following question was presented in the context of the existing Amphitheater School District policy relating to the "Meet and Confer Process": "Must negotiations (Meet and Confer Process) be conducted in meetings open to the public?" You have also requested that I answer the following question: "If the Amphitheater School District policy relating to the "Meet and Confer Process" is modified to provide that there shall be no negotiations committee, but that the Governing Board shall appoint a representative or representatives and that negotiations shall be conducted by these designated representatives of the Governing Board with the Amphitheater Classroom Teacher's Association or its representatives, must such negotiations be conducted in meetings open to the public?"

For the reasons hereinafter set forth, it is the opinion of this office that the answer to the first question is "yes", that negotiations conducted as part of the "Meet and Confer Process" pursuant to the existing Amphitheater School District policy attached hereto must be conducted in meetings open to the public, but that the answer to the second question is a qualified "no", that negotiations conducted by designated representatives of the School District need not occur in a meeting open to the public.

With reference to the first question, Amphitheater School District Policy No. 4135.4 establishes a "negotiations committee" for the purpose of "negotiating and seeking agreement on salaries and compensatory benefits." This

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committee constitutes a "public body" as defined in Section 38-431 of the Arizona Revised Statutes, which provides that the term "public body" includes "all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body." As such, the committee is subject to all of the rules pertaining to open meetings, and executive sessions of such committee are permissible only for the limited purposes enumerated in Section 38-431.03 of the Arizona Revised Statutes.

Prior to July 24, 1982, Section 38-431.03(A)(4) of the Arizona Revised Statutes provided as follows:

"A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that with the exception of salary discussions, an officer, appointee, or employee may demand that such discussion or consideration occur at a public meeting.

* * *

4. Discussions or consultations with representatives of employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees in order to review its position and instruct its designated representatives."

The provisions contained in subparagraph 4 were construed to permit the Governing Board of a School District to meet with its negotiating team in executive session to discuss

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and consider with that team salary schedules or compensation paid in the form of fringe benefits for employees. See Attorney General's Opinion No. I80-146. It was also construed to permit the Governing Board to meet in executive session with the representatives of employee organizations for the specified purposes only. See Attorney General's Opinion I81-058.

On April 27, 1982, the Governor of the State of Arizona approved an amendment to the Open Meeting Law. That revision, Chapter 278 of the 2nd Regular Session of the 35th Legislature, modified the provision set forth above in the following manner, effective July 24, 1982:

"A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration or employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining, or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that such discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with such notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether such discussion or consideration should occur at a public meeting.

* * *

5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body."

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By deleting the reference to "discussions or consultations with representatives of employee organizations", it would seem that the state legislature has repealed the authorization to conduct such discussions or consultations in an executive session. When the state legislature changes the language and substance of a statute, it is presumed that the legislature intended to make a change in the existing law. McCloe v. Utah Home Fire Insurance Co., 121 Ariz.402, 590 P.2d 941 (App.1978). This presumption of intended change gives rise to a duty to give effect to the amendment. Needel v. Needel, 15 Ariz.App.471, 489 P.2d 729 (1971).

In the event that this matter were to be interpreted by the Court, the Court's role would be to ascertain and give effect to the intent of the legislature. Mardian Construction Co., v. Superior Court, 113 Ariz.459 557 P.2d 526 (1976). And where the language of the statute is plain and unambiguous, and conveys a clear and definite meaning, there is no necessity to resort to rules of statutory interpretation, and the clear and unambiguous meaning of the statute would and should be enforced. O'Malley Lumber Co., v. Riley, 126 Ariz.166, 613 P.2d 629 (App.1980). Accordingly, the words and phrases contained in the statute, as revised effective July 24, 1982, would be given their ordinary meaning unless it appeared from the context or otherwise that different meanings were intended. McIntyre v. Mohave County, 127 Ariz.317, 620 P.2d 696 (1980).

Subparagraph 1 of the statute permits the public body to discuss and consider "employment" and "salaries", but these terms must be construed in the context of the remaining portions of that subsection, and should be considered in light of the previous subparagraph 4 as well. If the terms "employment" and "salaries" were construed in such a manner as to permit the Governing Board to enter into negotiations, then the previous subparagraph 4 would have been an unnecessary, redundant section. In this light, and in view of the repeal of former subparagraph 4, it appears that subparagraph 1 simply authorizes the Governing Board to discuss and

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consider (among its own members) the employment and salaries of individual officers, appointees, or employees, and does not provide authorization for the Governing Board to have discussions with other parties (representatives of employee organizations) in executive session regarding salaries, salary schedules or compensation paid in the form of fringe benefits.

An examination of subparagraph 5 (formerly 4) of the statute before and after the modification in July indicates clearly that prior to July the statute permitted negotiations to be conducted in an executive session with representatives of employee organizations, and that that permission has been withdrawn by the modification of the statute which became effective on July 24, 1982.

Accordingly, since the negotiations committee of the District is subject to the same open meeting requirements as the Governing Board itself, and since Section 38-431.03 no longer permits an executive session to be conducted for the purposes of "discussions or consultations with representatives of employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees", it is our opinion that such negotiations may not be conducted by the committee in an executive session, and must be conducted in an open meeting, with all of the requisite notices required by Section 38-431.02.

The analysis and the conclusions contained in your Memo dated October 26, 1982, were correct for the period of time prior to July 24, but the recent amendment to that statute has changed the effect of the law to such an extent that the conclusions are no longer the same.

With respect to the second question, the new statutes lead to a different conclusion. The language contained in the current Section 38-431.03(A)(5) refers to discussions or consultations with "designated representatives of the public body", and authorizes these discussions or

Alfred C. Strachan
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consultations in order to permit the public body to
"instruct its representatives regarding negotiations with
employee organizations"

If the designated representatives of the public body consist of a majority of the members of the public body, thus constituting a quorum, then all of the requirements of the Open Meeting statutes would be applicable. However, if the designated representatives of the public body consist of a person or persons who are not members of the governing body, or who, if they are members of the governing body, are not sufficient in number to constitute a quorum, then the designated representatives of the governing body may meet with and negotiate with the Amphitheater Classroom Teacher's Association or its representatives. A "meeting" is defined as "the gathering of a quorum of members of a public body". See Section 38-431(3) of the Arizona Revised Statutes. The case of Boyd v. Mary E. Dill School District No. 51, 129 Ariz.422, 631 P.2d 577 (App.1981), discussed the concept of one member of a governing body holding meetings and forming an intention to take further action. In that case, the Court held that the meeting between a president of a school district governing body and the school board's lawyer did not constitute an executive session. Accordingly, it seems clear that one or two members of a five member Governing Board who had been designated as representatives of the Governing Board could meet with other persons without that meeting being considered as a "meeting" or "executive session" within the context of the Open Meeting Law.

For these reasons, it is the opinion of this office that the Governing Board of Amphitheater School District may (if its current "negotiations" policy is modified) lawfully appoint designated representatives (who do not constitute a quorum of the Governing Body) and that those designated representatives may meet with the Amphitheater Classroom Teacher's Association or its designated representatives, for the purposes of negotiating pursuant to a "Meet and Confer" process, and that such negotiating sessions would not be considered "meetings" as that term

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is utilized in Section 38-431, et. seq., of the Arizona Revised Statutes, requiring such meetings to be conducted in public.

Thank you for permitting me to work with you in connection with these matters. I would be pleased to discuss these opinions or any aspects thereof with you at any convenient time.

Very truly yours,

COREY, FARRELL & BOGUTZ, P.C.

Barry M. Corey

BMC/tld

Certificated PersonnelNegotiations CommitteeSection I. Principles

A. Obtaining Objectives

The process described hereinafter is dependent on mutual understanding and cooperation between the Governing Board of Amphitheater Public Schools and the Amphitheater Classroom Teachers' Association. The Amphitheater Classroom Teachers' Association is hereinafter called the Association. It is therefore, extremely important that there be an exchange of views and that both parties participate in the deliberations.

B. Negotiation implies that the Governing Board of Amphitheater Public Schools and the Association shall:

1. Negotiate in good faith;
2. Have authority to speak for their respective parties to the agreement which is to be negotiated;
3. Assume equal time to present and discuss their positions on all issues introduced into negotiations.

C. Negotiations Committee

Two members of the Governing Board of Amphitheater Public Schools and two representatives named by the Association shall comprise a committee for the purpose of negotiating and seeking agreement on salaries and compensatory benefits. However, the Governing Board of Amphitheater Public Schools and/or the Association may at their discretion designate representatives to serve in lieu of the two committee members. The negotiators have the prerogative to call in resource individuals on occasion to assist the negotiatory activities of the committee. The role of the negotiations committee is that of negotiating and seeking agreement on salaries and compensatory benefits as expeditiously as possible.

Section II. Procedures

A. Organization

The Governing Board of Amphitheater Public Schools shall call for a meeting of the negotiations committee not later than fifteen (15) days after the first day of February, unless both parties agree otherwise, giving due notice of time and place. The purpose of this meeting shall be to make arrangements for clerical assistance and for the handling of administrative detail. Agenda items for subsequent meeting may be submitted at this organizational meeting. The distribution of minutes of negotiations sessions shall be accomplished in a way approved by both parties.

Negotiations Committee (continued)Section II. Procedures (continued)

B. Meetings

Additional meetings shall be agreed upon by the negotiations committee as may be necessary. All members of the committee shall receive timely notices of each meeting with a statement of the proposed agenda. Meetings shall be scheduled to avoid conflicts with school duties of Association representatives, or released time shall be arranged when meetings are held during school hours.

C. Study Committee

The negotiations committee may appoint ad hoc study committees and retain consultants for a research, study and development of reports. Such committees shall report their findings only to the negotiations committee. Costs incurred shall be shared equally by the Governing Board of Amphitheater Public Schools and the Association.

D. Exchange of Proposals and Information

March 1 is prescribed as the date by which both teacher and the Governing Board of Amphitheater Public Schools' negotiator(s) will have presented their respective teacher compensatory proposals for the following fiscal year. The Governing Board of Amphitheater Public Schools and Association agree to furnish, upon reasonable request, such information as will assist in developing intelligent, feasible and constructive proposals in behalf of teachers, students and school systems. This requested information should include complete and accurate financial reports and the tentative budget, if available, for the next school year.

E. News Releases

Each year the negotiations committee will determine whether or not to have joint, single, or no press releases.

Section III. Agreement

A. When agreements are reached, they shall be recorded in the official minutes of the negotiations committee. The contents of the agreements shall then be submitted to the membership of the Association and to the Governing Board of Amphitheater Public Schools for action.

B. If agreement is not reached by April 1, Section IV may be enacted by either party; however, the negotiations may be extended for periods of fifteen (15) days upon agreement of both parties.

Section IV. Arbitrator (Fact Finding)

- A. If Agreement cannot be reached, either party may request the assistance of an arbitrator. This arbitrator will be appointed within seven (7) days after the request of either party to the other. The arbitrator will be selected from the A.A.A. or F.M.C.S. lists of arbitrators and approved by the negotiators. The arbitrator will be expected to report recommendations for settlement to the negotiations committee within fifteen (15) days after the hearing and presentation of facts. The recommendations and findings of the arbitrator cannot, by law, be binding on either party; however, it is hoped that all members of the negotiations committee will consider the recommendations as being in good faith and worthy of acceptance. The arbitrator terminates his/her activities upon submission of his/her report to the negotiations committee.
- B. Costs and expenses which may be incurred in securing and utilizing the services of an arbitrator shall be shared equally by the Governing Board of Amphitheater Public Schools and the Association.

Section V. Amendment of Agreement Procedure

The yearly negotiations agreement, Section III of Policy P 4135.4 (b) may be amended upon agreement of the representatives of both sides. The arbitrator's findings may be modified by agreement among representatives of both sides before submission to the Governing Board.

Policy
adopted: 5/24/76

Revised: 4/07/81

AMPHITHEATER PUBLIC SCHOOLS
Tucson, Arizona